

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CIV 9909

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 JAMES M. BURKE and BRADLEY
 L. GROW, as the designated Sellers'
 Representatives, under that certain
 Agreement and Plan of Reorganization and
 Merger by and between Eateries Holdings,
 LLC, Eateries, Inc., Fiesta LLC, and the
 members of Eateries Holdings, LLC,
 on the one hand, and Hestia Holdings, LLC,
 Eateries Merger Sub, Inc. and Fiesta
 Merger Sub, Inc., on the other hand,
 dated as of December 26, 2006,

Civil Action No.:

COMPLAINT

Plaintiffs,

-against-

HESTIA HOLDINGS, LLC, a Delaware
 Limited Liability Company, EATERIES, INC., a
 Delaware corporation and FIESTA HOLDINGS,
 INC., a Delaware corporation,

Defendants.
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Plaintiffs James M. Burke and Bradley L. Grow, as the designated Sellers'
 Representatives, under that certain Agreement and Plan of Reorganization and Merger by and
 between Eateries Holdings, LLC, Eateries, Inc., Fiesta, LLC, and the members of Eateries
 Holdings, LLC, on the one hand, and Hestia Holdings, LLC, Eateries Merger Sub, Inc., and
 Fiesta Merger Sub, Inc., on the other hand, dated as of December 26, 2006, hereby allege as
 follows:

JURISDICTION AND VENUE

1. Plaintiff James M. Burke is a resident and citizen of the State of
 Oklahoma, residing in Oklahoma County, Oklahoma.

2. Plaintiff Bradley L. Grow is a resident and citizen of the State of Oklahoma, residing in Oklahoma County, Oklahoma.

3. During all periods relevant to this matter, Defendant Hestia Holdings, LLC, was a Delaware limited liability company, with its principal place of business in Texas.

4. During all periods relevant to this matter, Defendant Eateries, Inc. was a Delaware corporation, with its principal place of business in Texas.

5. During all periods relevant to this matter, Defendant Fiesta Holdings, Inc. was a Delaware corporation, with its principal place of business in Delaware.

6. Plaintiffs maintain this action as the designated Sellers' Representatives under that certain Agreement and Plan of Reorganization and Merger by and between Eateries Holdings, LLC, Eateries, Inc., Fiesta, LLC, the members of Eateries Holdings, LLC ("Holdings") (collectively "Sellers"), Hestia Holdings, LLC ("Purchaser"), Eateries Merger Sub, Inc., and Fiesta Merger Sub, Inc. dated as of December 26, 2006 (the "Agreement"), by which Purchaser, through the merger and other "Contemplated Transactions" described therein acquired the subsidiaries of Holdings (the "Transaction").

7. This Court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C.A. § 1332 (a)(1), because the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and the named Plaintiffs are citizens of a state different than that of the Defendants.

8. Defendants consented to the jurisdiction of this Court pursuant to Section 13.3 of the Agreement.

9. Venue is proper in the Southern District of New York under 28 U.S.C.A. § 1391 and pursuant to Section 13.3 of the Agreement.

COUNT ONE

(Breach of Contract)

10. The allegations contained in paragraphs 1 through 7, inclusive, as if fully set forth herein.

11. Pursuant to Sections 2.2, 2.3 and 2.7 of the Agreement, Plaintiffs earned additional consideration and are therefore entitled to certain “Earnout Notes” under the Agreement.

12. Pursuant to Sections 2.2(g)(iii) and 2.3 (g)(i)(C), the Defendants were obliged to issue Five Million Dollars (\$5,000,000) of “Earnout Notes” to Plaintiffs.

13. Plaintiffs have made demand upon Defendants that the “Earnout Notes” be issued to Plaintiffs in accordance with the terms of the Agreement. However, Defendants have failed and refuse to issue such “Earnout Notes” and are, therefore, in default.

14. Plaintiffs are entitled to specifically enforce the contract terms pursuant to Section 13.15 of the Agreement.

15. Plaintiffs are also entitled to indemnification to recover their losses, including the fees and costs incurred in maintaining this action, pursuant to Article 10 of the Agreement.

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against the Defendants by entering an award for Plaintiffs for specific performance, directing that the Defendants issue the “Earnout Notes” in the amount of Five Million Dollars (\$5,000,000); enter and Order awarding interest allowed by law; enter and Order directing Defendants to pay the court costs, expert fees, litigation costs and attorneys’ fees of the Plaintiffs; and granting Plaintiffs any other relief to which they or it may be entitled under the law.

Dated: November 8, 2007

ENTWISTLE & CAPPUCCI LLP

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